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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
LIQUIDATING AGENT FOR
WESTERN CORPORATE FEDERAL
CREDIT UNION,

Plaintiff,

v.

ROBERT A. SIRAVO, et al.,
Defendants.

TIMOTHY T. SIDLEY,
Counterclaimant,

v.

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
LIQUIDATING AGENT FOR
WESTERN CORPORATE FEDERAL
CREDIT UNION,

Counterclaim Defendant.

AND RELATED COUNTERCLAIMS.

Case No. CV10-01597 GW (MANx)

**DEFENDANT TIMOTHY T.
SIDLEY'S SECOND AMENDED
ANSWER (TO SECOND
AMENDED COMPLAINT) AND
AMENDED COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

Courtroom: 10

Honorable George H. Wu

1 Defendant Timothy T. Sidley ("Sidley") hereby responds to the allegations of
 2 plaintiff National Credit Union Administration Board as Liquidating Agent for
 3 Western Corporate Federal Credit Union's ("NCUA") in the Second Amended
 4 Complaint, docket no. 116 (the "SAC"), filed on February 22, 2011.

5 **JURISDICTION AND VENUE**

6 1. Sidley admits that Western Corporate Federal Credit Union
 7 ("WesCorp") was a credit union with its corporate offices located in San Dimas,
 8 California. Sidley further admits, on information and belief, that WesCorp was
 9 placed into conservatorship by the National Credit Union Administration Board on
 10 March 19, 2009, and that WesCorp as placed into involuntary liquidation on
 11 October 1, 2010. Sidley lacks knowledge or information sufficient to form a belief
 12 as to the truth of the remaining allegations of Paragraph 1 and on that basis denies
 13 those allegations.

14 2. Paragraph 2 contains legal conclusions, to which no response is
 15 required. To the extent the allegations require a response, they are denied.

16 3. Paragraph 3 contains legal conclusions, to which no response is
 17 required. To the extent the allegations require a response, they are denied.

18 4. Paragraph 4 contains legal conclusions, to which no response is
 19 required. To the extent the allegations require a response, Sidley admits that he is a
 20 resident of California and is subject to the personal jurisdiction of this Court and
 21 denies the remaining allegations.

22 5. Paragraph 5 contains legal conclusions, to which no response is
 23 required. To the extent the allegations require a response, they are denied.

24 **PARTIES**

25 6. Sidley admits, on information and belief, that the National Credit
 26 Union Administration Board is the liquidating agent for WesCorp.

27 7. Sidley admits, on information and belief, that Robert A. Siravo
 28 ("Siravo") served as President and CEO of WesCorp. Sidley lacks knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations of
2 Paragraph 7 and on that basis denies those allegations.

3 8. Sidley admits, on information and belief, that Todd M. Lane
4 (“Lane”) served as Chief Financial Officer of WesCorp. Sidley lacks knowledge or
5 information sufficient to form a belief as to the truth of the remaining allegations of
6 Paragraph 8 and on that basis denies those allegations.

7 9. Sidley admits, on information and belief, that Robert J. Burrell
8 (“Burrell”) served as Executive Vice President and as the Chief Investment Officer
9 for WesCorp. Sidley lacks knowledge or information sufficient to form a belief as
10 to the truth of the remaining allegations of Paragraph 9 and on that basis denies
11 those allegations.

12 10. Sidley admits that he served as Vice President for Risk Assessment
13 for WesCorp starting on or about June 18, 1998 but denies that he served as Vice
14 President for Risk Assessment for WesCorp through April 2, 2010. Sidley further
15 admits that he also served as Chief Risk Officer in charge of investment credit
16 services for WesCorp but denies that he served as Chief Risk Officer beginning
17 June 18, 1998 – Sidley did not begin serving as Chief Risk Officer until in or about
18 2007. On or about June 9, 2009, Sidley ceased serving as Vice President for Risk
19 Assessment and as Chief Risk Officer and began serving as Vice President of
20 Strategic Projects until he retired from WesCorp on April 2, 2010. Sidley admits
21 that he currently resides in California. The remaining allegations of paragraph 10
22 contain legal conclusions to which no response is required. To the extent the
23 allegations requires a response, they are denied.

24 11. Sidley admits that Thomas E. Swedberg (“Swedberg”) was Vice
25 President of Human Resources and Vice President of Strategic Planning and
26 Organizational Development. Sidley lacks knowledge or information sufficient to
27 form a belief as to the truth of the remaining allegations of Paragraph 11 and on that
28 basis denies those allegations.

1 12. Sidley admits that Robert H. Harvey, Jr. ("Harvey") was a director
2 and the Chairman of the WesCorp board of directors. Sidley lacks knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations of
4 Paragraph 12 and on that basis denies those allegations.

5 13. Sidley admits that James P. Jordan ("Jordan") was a member of the
6 WesCorp board of directors and was the Vice Chairman of the WesCorp board.
7 Sidley lacks knowledge or information sufficient to form a belief as to the truth of
8 the remaining allegations of Paragraph 13 and on that basis denies those allegations.

9 14. Sidley admits that Timothy Kramer ("Kramer") was a member of the
10 WesCorp board of directors and served as the Secretary and Treasurer of the
11 WesCorp board. Sidley lacks knowledge or information sufficient to form a belief
12 as to the truth of the remaining allegations of Paragraph 14 and on that basis denies
13 those allegations.

14 15. Sidley admits that Robin J. Lentz ("Lentz") was a member of the
15 WesCorp board of directors. Sidley lacks knowledge or information sufficient to
16 form a belief as to the truth of the remaining allegations of Paragraph 15 and on that
17 basis denies those allegations.

18 16. Sidley admits that John M. Merlo ("Merlo") was a member of the
19 WesCorp board of directors. Sidley lacks knowledge or information sufficient to
20 form a belief as to the truth of the remaining allegations of Paragraph 16 and on that
21 basis denies those allegations.

22 17. Sidley admits that Gordon Dames ("Dames") was a member of the
23 WesCorp board of directors. Sidley lacks knowledge or information sufficient to
24 form a belief as to the truth of the remaining allegations of Paragraph 17 and on that
25 basis denies those allegations.

26 18. Sidley admits that William Cheney ("Cheney") was a member of the
27 WesCorp board of directors. Sidley lacks knowledge or information sufficient to
28 form a belief as to the truth of the remaining allegations of Paragraph 18 and on that

1 basis denies those allegations.

2 19. Sidley admits that Warren Nakamura ("Nakamura") was a member
3 of the WesCorp board of directors. Sidley lacks knowledge or information
4 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
5 19 and on that basis denies those allegations.

6 20. Sidley admits that Brian Osberg ("Osberg") was a member of the
7 WesCorp board of directors. Sidley lacks knowledge or information sufficient to
8 form a belief as to the truth of the remaining allegations of Paragraph 20 and on that
9 basis denies those allegations.

10 21. Sidley admits that David Rhamy ("Rhamy") was a member of the
11 WesCorp board of directors. Sidley lacks knowledge or information sufficient to
12 form a belief as to the truth of the remaining allegations of Paragraph 21 and on that
13 basis denies those allegations.

14 22. Sidley admits that Sharon Updike ("Updike") was a member of the
15 WesCorp board of directors. Sidley lacks knowledge or information sufficient to
16 form a belief as to the truth of the remaining allegations of Paragraph 22 and on that
17 basis denies those allegations.

18 23. Sidley admits that several of the Director Defendants¹ were members
19 of WesCorp's Asset and Liability Committee ("ALCO"), budget committee,
20 compensation committee and other committees. Sidley lacks knowledge or
21 information sufficient to form a belief as to the truth of the remaining allegations of
22 Paragraph 23 and on that basis denies those allegations.

23 24. Sidley admits that WesCorp's ALCO had oversight responsibility for
24 WesCorp's asset liability management process, including investments. Sidley lacks
25 knowledge or information sufficient to form a belief as to the allegations of
26 Paragraph 24 and on that basis denies those allegations, except to the extent they

27 ¹ Sidley uses the term "Director Defendants" as used in the Second Amended
28 Complaint to refer to now-dismissed defendants Harvey, Merlo, Dames, Jordan,
Kramer, Cheney, Lentz, Nakamura, Osberg, Rhamy and Updike.

1 reference the contents of WesCorp's corporate policies, which speak for
 2 themselves. Sidley refers to WesCorp's corporate policies for their contents and
 3 denies any characterization inconsistent with their terms.

4 25. Sidley admits that WesCorp's ALCO had responsibilities for
 5 WesCorp's investment strategies including investments, policies and strategies,
 6 concentration limits, the purchase and sale of securities and directing the types and
 7 level of risk. Sidley lacks knowledge or information sufficient to form a belief as to
 8 the allegations of Paragraph 25 and on that basis denies those allegations.

9 26. Sidley admits that many WesCorp board members attended ALCO
 10 meetings. Sidley lacks knowledge or information sufficient to form a belief as to
 11 the truth of the remaining allegations of Paragraph 26 and on that basis denies those
 12 allegations.

13 27. Sidley lacks knowledge or information sufficient to form a belief as
 14 to the truth of the allegations of Paragraph 27 and on that basis denies them.

15 28. Paragraph 28 contains legal conclusions, to which no response is
 16 required. To the extent the allegations require a response, they are denied.

17 29. Paragraph 29 contains legal conclusions, to which no response is
 18 required. To the extent the allegations require a response, they are denied.

19 SUMMARY OF CLAIMS

20 30. Sidley admits, on information and belief, that WesCorp was a non-
 21 profit corporate credit union run for the benefit of its members, who were
 22 themselves credit unions. Sidley admits, on information and belief, that WesCorp
 23 provided its members with banking and investment services. The remaining
 24 allegations of Paragraph 30 contain legal conclusions, to which no response is
 25 required. To the extent the allegations require a response, they are denied.

26 31. Sidley admits, on information and belief, that WesCorp was a
 27 corporate federal credit union and provided its members with banking and
 28 investment services. Sidley admits that Siravo served as President and CEO of

1 WesCorp. Sidley lacks knowledge or information sufficient to form a belief as to
2 the truth of the remaining allegations of Paragraph 31, and on that basis denies
3 those allegations.

4 32. Sidley admits that WesCorp invested in securities, including private
5 label mortgage backed securities ("MBS"). Sidley lacks knowledge or information
6 sufficient to form a belief as to the remaining allegations of Paragraph 32 and on
7 that basis denies those allegations.

8 33. Sidley lacks knowledge or information sufficient to form a belief as
9 to the truth of the allegations of Paragraph 33 and on that basis denies those
10 allegations.

11 34. Sidley lacks knowledge or information sufficient to form a belief as
12 to the truth of the allegations of Paragraph 34 and on that basis denies those
13 allegations.

14 35. Sidley lacks knowledge or information sufficient to form a belief as
15 to the truth of allegations of Paragraph 35 and on that basis denies those allegations.

16 36. Sidley admits that WesCorp invested in MBS, including MBS based
17 on Option ARM loans. Sidley lacks knowledge or information sufficient to form a
18 belief as to the truth of the remaining allegations of Paragraph 36 and on that basis
19 denies those allegations.

20 37. Sidley lacks knowledge or information sufficient to form a belief as
21 to the truth of the allegations of Paragraph 37 and on that basis denies those
22 allegations.

23 38. Sidley admits that WesCorp invested in MBS, including MBS based
24 on Option ARM loans. Sidley lacks knowledge or information sufficient to form a
25 belief as to the remaining allegations of Paragraph 38 and on that basis denies those
26 allegations.

27 39. Sidley admits, on information and belief, that the MBC loans that
28 WesCorp purchased for investment were rated AAA or at least AA by Moody's and

1 S&P, or both, and were underwritten by leading investment banks. Sidley lacks
2 knowledge or information sufficient to form a belief as to the truth of the remaining
3 allegations of Paragraph 39 and on that basis denies those allegations.

4 40. Sidley lacks knowledge or information to form a belief as to the truth
5 of the allegations regarding WesCorp's 2009 recorded losses, and on that basis
6 denies them, except to the extent they reference the contents of WesCorp's 2009
7 financial statements, which speak for themselves. Sidley refers to WesCorp's 2009
8 financial statements for their contents and denies any characterization inconsistent
9 with their terms. Sidley lacks knowledge or information sufficient to form a belief
10 as to the truth of the remaining allegations of Paragraph 40 and on that basis denies
11 those allegations.

12 41. Sidley denies that WesCorp's officers failed to impose prudent
13 concentration limits. Sidley lacks knowledge or information sufficient to form a
14 belief as to the truth of the remaining allegations of Paragraph 41, and on that basis
15 denies those allegations.

16 42. Sidley lacks knowledge or information sufficient to form a belief as
17 to the truth of the allegations of Paragraph 42 and on that basis denies those
18 allegations.

19 43. Sidley lacks knowledge or information sufficient to form a belief as
20 to the truth of the allegations of Paragraph 43 to the extent they refer to Siravo and
21 Swedberg, and on that basis denies those allegations. The remaining allegations of
22 Paragraph 43 contain legal conclusions, to which no response is required. To the
23 extent the allegations require a response, they are vague and ambiguous and they
24 are denied.

25 **FACTUAL ALLEGATIONS**

26 **The Federal Credit Union System**

27 44. Sidley admits, on information and belief, that the federal credit union
28 system is a three-tier system consisting of (1) one wholesale corporate credit union

1 (U.S. Central Federal Credit Union); (2) retail corporate credit unions; and (3)
2 “natural person” credit unions. Sidley further admits, on information and belief,
3 that the wholesale corporate credit union, “U.S. Central” provides services to the
4 retail corporate credit unions, while the retail corporate credit unions provide
5 services to both federally-chartered and state-chartered natural person credit unions.
6 Sidley lacks knowledge or information sufficient to form a belief as to the truth of
7 the remaining allegations of Paragraph 44 and on that basis denies them.

8 45. Sidley admits, on information and belief, that WesCorp was a
9 corporate credit union. Sidley lacks knowledge or information sufficient to form a
10 belief as to the truth of the remaining allegations of Paragraph 45 and on that basis
11 denies those allegations.

12 46. Sidley admits, on information and belief, that corporate credit unions
13 are owned by their members and that in the case of retail corporate credit unions,
14 the members are primarily natural person credit unions. Sidley lacks knowledge or
15 information sufficient to form a belief as to the truth of the remaining allegations of
16 Paragraph 46 and on that basis denies those allegations.

17 47. Sidley admits, on information and belief, that retail corporate credit
18 unions provide services and support to their natural person credit union members.
19 Sidley admits, on information and belief, that retail corporate credit unions offer
20 their natural person credit unions banking and investment products and services,
21 and that these products and services may include settlement of transactions such as
22 checks, ATM and credit card transactions and wire transfers. Sidley lacks
23 knowledge or information sufficient to form a belief as to the truth of the remaining
24 allegations of Paragraph 47 and on that basis denies those allegations.

25 48. Sidley lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations regarding alleged statements from WesCorp’s
27 website, and on that basis denies them, except to the extent they reference the
28 contents of WesCorp’s website, which speaks for itself. Sidley refers to WesCorp’s

1 website for its contents and denies any characterization inconsistent with its terms.
2 Sidley lacks knowledge or information sufficient to form a belief as to the truth of
3 the remaining allegations of Paragraph 48 and on that basis denies those allegations.

4 49. Sidley lacks knowledge or information sufficient to form a belief as
5 to the truth of the allegations regarding alleged statements from WesCorp's bylaws,
6 and on that basis denies them, except to the extent they reference the contents of
7 WesCorp's bylaws, which speak for themselves. Sidley refers to WesCorp's
8 bylaws for their contents and denies any characterization inconsistent with their
9 terms. Sidley lacks knowledge or information sufficient to form a belief as to the
10 truth of the remaining allegations of Paragraph 49 and on that basis denies those
11 allegations.

12 50. Sidley admits, on information and belief, that corporate credit unions
13 pool the assets of their natural person credit union members and provide banking
14 and investment services to their members. Sidley lacks knowledge or information
15 sufficient to form a belief as to the truth of the allegations of Paragraph 50 and on
16 that basis denies those allegations.

17 51. Sidley admits, on information and belief, that WesCorp provided
18 services to its credit union members. Sidley lacks knowledge or information
19 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
20 51 and on that basis denies them.

21 **The Officer Defendants' Responsibilities and Duties**

22 52. Sidley lacks knowledge or information sufficient to form a belief as
23 to the truth of the allegations regarding alleged statements from WesCorp's
24 policies, and on that basis denies them, except to the extent they reference the
25 contents of WesCorp's policies, which speak for themselves. Sidley refers to
26 WesCorp's policies for their contents and denies any characterization inconsistent
27 with their terms. Sidley lacks knowledge or information sufficient to form a belief
28 as to the truth of the remaining allegations of Paragraph 52 and on that basis denies

1 those allegations.

2 53. Sidley admits that Siravo served as President and CEO of WesCorp.
3 Sidley lacks knowledge or information sufficient to form a belief as to the truth of
4 the remaining allegations of Paragraph 53 and on that basis denies those allegations.

5 54. Sidley admits that Siravo served as President and CEO of WesCorp.
6 The remaining allegations of Paragraph 54 contain legal conclusions, to which no
7 response is required. To the extent the allegations require a response, they are
8 denied.

9 55. Sidley admits that Lane served as Chief Financial Officer of
10 WesCorp. Sidley lacks knowledge or information sufficient to form a belief as to
11 the truth of the remaining allegations of Paragraph 55 and on that basis denies those
12 allegations.

13 56. Sidley admits that Burrell served as Chief Investment Officer for
14 WesCorp. Sidley lacks knowledge or information sufficient to form a belief as to
15 the truth of the remaining allegations of Paragraph 56 and on that basis denies those
16 allegations.

17 57. Sidley lacks knowledge or information sufficient to form a belief as
18 to the truth of the allegations of Paragraph 57 and on that basis denies those
19 allegations.

20 58. Sidley admits that he served as Vice President for Risk Assessment
21 for WesCorp starting on or about June 18, 1998 through on or about June 9, 2009.
22 Sidley further admits that the Director of Investment Credit Services reported to
23 him as the Vice President for Risk Assessment. Sidley further admits that Risk
24 Assessment department was responsible for risk assessment, investment risk
25 monitoring processes, systems and procedures, but was not responsible for risk
26 management or implementation of investment risk policies. The remaining
27 allegations of Paragraph 58 contain legal conclusions, to which no response is
28 required. To the extent the allegations require a response, they are vague and

1 ambiguous and they are denied.

2 59. Sidley admits, on information and belief, that WesCorp had an
3 Asset/Liability Staff Committee ("ALSC"). Sidley lacks knowledge or information
4 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
5 59 and on that basis denies those allegations.

6 60. Sidley admits that he was a non-voting member of the ALSC and a
7 staff liaison to and non-voting member of the ALCO. Sidley lacks knowledge or
8 information sufficient to form a belief as to the truth of the remaining allegations of
9 Paragraph 60 and on that basis denies those allegations.

10 **WesCorp's Era of Growth**

11 61. Sidley lacks knowledge or information sufficient to form a belief as
12 to the truth of the allegations of Paragraph 61 and on that basis denies those
13 allegations.

14 62. Sidley admits that Siravo served as President and CEO of WesCorp.
15 Sidley lacks knowledge or information sufficient to form a belief as to the
16 remaining allegations of Paragraph 62 and on that basis denies those allegations.

17 63. Sidley lacks knowledge or information sufficient to form a belief as
18 to the truth of the allegations of Paragraph 63 and on that basis denies those
19 allegations.

20 64. Sidley lacks knowledge or information sufficient to form a belief as
21 to the truth of the allegations of Paragraph 64 and on that basis denies those
22 allegations.

23 65. Sidley lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations of Paragraph 65 and on that basis denies those
25 allegations.

26 66. Sidley lacks knowledge or information sufficient to form a belief as
27 to the truth of the allegations of Paragraph 66 and on that basis denies those
28 allegations.

1 67. Sidley admits that for a period of time, private label MBS were
2 typically higher-yielding than MBS issued by government agencies. Sidley further
3 admits that WesCorp invested in MBS, including private label MBS. Sidley lacks
4 knowledge or information sufficient to form a belief as to the truth of the remaining
5 allegations of Paragraph 67 and on that basis denies those allegations.

6 68. Sidley lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations of Paragraph 68 and on that basis denies those
8 allegations, except to the extent they reference the contents of WesCorp's corporate
9 policies, which speak for themselves. Sidley refers to WesCorp's corporate policies
10 for their contents and denies any characterization inconsistent with their terms..

11 69. Sidley lacks knowledge or information sufficient to form a belief as
12 to the truth of the allegations of Paragraph 69 and on that basis denies those
13 allegations.

14 70. Sidley lacks knowledge or information sufficient to form a belief as
15 to the truth of the allegations of Paragraph 70 and on that basis denies those
16 allegations.

17 **WesCorp's Private Label MBS Investments**

18 71. Sidley lacks knowledge or information sufficient to form a belief as
19 to the truth of the allegations of Paragraph 71 and on that basis denies those
20 allegations.

21 72. Sidley lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations of Paragraph 72 and on that basis denies those
23 allegations.

24 73. Sidley admits that WesCorp invested in AAA rated and AA rated
25 private label MBS. The remaining allegations of Paragraph 73 contain legal
26 conclusions, to which no response is required. To the extent the allegations require
27 a response, Sidley lacks knowledge or information sufficient to form a belief as to
28 the truth of the remaining allegations of Paragraph 73 and on that basis denies those

1 allegations, except to the extent they reference the contents of NCUA regulations
2 and/or WesCorp's investment policies, which speak for themselves. Sidley refers
3 to the NCUA's regulations and/or WesCorp's investment policies for their contents
4 and denies any characterization inconsistent with their terms.

5 74. Sidley admits that WesCorp invested in MBS, including
6 Collateralized Debt Obligations ("CDOs") and Option ARM MBS. Sidley lacks
7 knowledge or information sufficient to form a belief as to the truth of the remaining
8 allegations of Paragraph 74 and on that basis denies those allegations.

9 75. Sidley admits that CDOs are shares in a pool of MBS. The
10 remaining allegations of Paragraph 75 are legal conclusions, to which no response
11 is required. To the extent the allegations require a response, they are denied.

12 76. Sidley admits that WesCorp purchased CDOs. Sidley lacks
13 knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations of Paragraph 76 and on that basis denies those allegations.

15 77. Sidley admits that Option ARM MBS are shares in pools of Option
16 ARM mortgages. Sidley further admits, on information and belief, that in some
17 instances Option ARM MBS monthly payments "reset." Sidley lacks knowledge or
18 information sufficient to form a belief as to the remaining allegations of Paragraph
19 77 and on that basis denies those allegations.

20 78. Sidley lacks knowledge or information sufficient to form a belief as
21 to the truth of the allegations of Paragraph 78 and on that basis denies those
22 allegations.

23 79. Sidley lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations of Paragraph 79 and on that basis denies those
25 allegations.

26 80. Sidley admits that WesCorp invested in Option ARM MBS. Sidley
27 lacks knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations of Paragraph 80 and on that basis denies those allegations.

1 or information sufficient to form a belief as to the truth of the allegations of
2 Paragraph 87 and on that basis denies those allegations.

3 88. Sidley lacks knowledge or information sufficient to form a belief as
4 to the truth of the allegations of Paragraph 88 and on that basis denies those
5 allegations, except to the extent they reference the contents of WesCorp's budgets,
6 which speak for themselves. Sidley refers to WesCorp's budgets for their contents
7 and denies any characterization inconsistent with their terms.

8 89. Sidley lacks knowledge or information sufficient to form a belief as
9 to the truth of the allegations of Paragraph 89 and on that basis denies those
10 allegations.

11 90. Sidley lacks knowledge or information sufficient to form a belief as
12 to the truth of the allegations of Paragraph 90 and on that basis denies those
13 allegations, except to the extent they reference the contents of WesCorp's budgets,
14 which speak for themselves. Sidley refers to WesCorp's budgets for their contents
15 and denies any characterization inconsistent with their terms.

16 91. Sidley lacks knowledge or information sufficient to form a belief as
17 to the truth of the allegations of Paragraph 91 and on that basis denies those
18 allegations.

19 92. Sidley lacks knowledge or information sufficient to form a belief as
20 to the truth of the allegations of Paragraph 92 and on that basis denies those
21 allegations.

22 93. Sidley lacks knowledge or information sufficient to form a belief as
23 to the truth of the allegations of Paragraph 93 and on that basis denies those
24 allegations.

25 94. Sidley lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations of Paragraph 94, and on that basis denies those
27 allegations, except to the extent they reference the contents of WesCorp's budgets,
28 which speak for themselves. Sidley refers to WesCorp's budgets for their contents

1 and denies any characterization inconsistent with their terms.

2 95. Sidley lacks knowledge or information sufficient to form a belief as
3 to the truth of the allegations of Paragraph 95 and on that basis denies those
4 allegations.

5 96. Sidley lacks knowledge or information sufficient to form a belief as
6 to the truth of the allegations of Paragraph 96 and on that basis denies those
7 allegations.

8 97. Sidley lacks knowledge or information sufficient to form a belief as
9 to the truth of the allegations of Paragraph 97 and on that basis denies those
10 allegations, except to the extent they reference the contents of WesCorp's ALCO
11 books, which speak for themselves. Sidley refers to WesCorp's ALCO books for
12 their contents and denies any characterization inconsistent with their terms.

13 98. Sidley lacks knowledge or information sufficient to form a belief as
14 to the truth of the allegations of Paragraph 98 and on that basis denies those
15 allegations.

16 99. Sidley lacks knowledge or information sufficient to form a belief as
17 to the truth of the allegations of Paragraph 99 and on that basis denies those
18 allegations.

19 100. Paragraph 100 contains legal conclusions, to which no response is
20 required. To the extent the allegations require a response, Sidley lacks knowledge
21 or information sufficient to form a belief as to the truth of the allegations of
22 Paragraph 100 and on that basis denies those allegations.

23 101. Paragraph 101 contains legal conclusions, to which no response is
24 required. To the extent the allegations require a response, Sidley lacks knowledge
25 or information sufficient to form a belief as to the truth of the allegations of
26 Paragraph 101 and on that basis denies those allegations.

27 102. Sidley lacks knowledge or information sufficient to form a belief as
28 to the truth of the allegations of Paragraph 102 and on that basis denies those

1 allegations.

2 103. Paragraph 103 contains legal conclusions, to which no response is
3 required. To the extent the allegations require a response, Sidley lacks knowledge
4 or information sufficient to form a belief as to the truth of the allegations of
5 Paragraph 103 and on that basis denies those allegations.

6 104. Sidley lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations of Paragraph 104 and on that basis denies those
8 allegations.

9 **MBS Concentration Risk**

10 105. Paragraph 105 contains legal conclusions, to which no response is
11 required. To the extent the allegations require a response, Sidley lacks knowledge
12 or information sufficient to form a belief as to the truth of the allegations of
13 Paragraph 105 and on that basis denies those allegations, except to the extent they
14 reference the contents of NCUA regulation, which speak for themselves. Sidley
15 refers to the NCUA regulations for their contents and denies any characterization
16 inconsistent with their terms.

17 106. Sidley lacks knowledge or information sufficient to form a belief as
18 to the truth of the allegations of Paragraph 106 and on that basis denies those
19 allegations.

20 107. Sidley admits that WesCorp provided services to its members.
21 Sidley lacks knowledge or information sufficient to form a belief as to the truth of
22 the remaining allegations of Paragraph 107 and on that basis denies those
23 allegations.

24 108. Sidley admits that WesCorp's Board of Directors was responsible for
25 setting investment policies. Sidley lacks knowledge or information sufficient to
26 form a belief as to the truth of the remaining allegations of Paragraph 108 and on
27 that basis denies those allegations, except to the extent they reference the contents
28 of WesCorp's policies, which speak for themselves. Sidley refers to WesCorp's

1 policies for their contents and denies any characterization inconsistent with their
2 terms..

3 109. Sidley admits that the ALCO had responsibilities for reviewing
4 WesCorp's investments. Sidley lacks knowledge or information sufficient to form
5 a belief as to the truth of the remaining allegations of Paragraph 109 and on that
6 basis denies those allegations.

7 110. Sidley denies the allegations of paragraph 110 of the Complaint.
8 Sidley headed the Risk Assessment Department at WesCorp. WesCorp's Risk
9 Assessment Department was responsible for proposing obligor concentration limits
10 for WesCorp's investment portfolio but was not responsible for proposing
11 investment concentration limits for WesCorp's investment portfolio. Sidley and the
12 Risk Assessment Department at all times complied with the relevant and applicable
13 WesCorp policies, including WesCorp's Corporate Policy 940-5. Sidley lacks
14 knowledge or information sufficient to form a belief as to the truth of the remaining
15 allegations of Paragraph 110 and on that basis denies those allegations.

16 111. Sidley admits that WesCorp's board adopted policies specifying
17 concentration limits for its investment securities and from time to time amended the
18 policies to change limits or impose new limits. Sidley lacks knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations of
20 Paragraph 111 and on that basis denies those allegations, except to the extent they
21 reference the contents of WesCorp's policies, which speak for themselves. Sidley
22 refers to WesCorp's policies for their contents and denies any characterization
23 inconsistent with their terms.

24 112. Sidley lacks knowledge or information sufficient to form a belief as
25 to the truth of the allegations of Paragraph 112 and on that basis denies them.

26 113. Sidley lacks knowledge or information sufficient to form a belief as
27 to the truth of the allegations of Paragraph 113 and on that basis denies those
28 allegations.

1 114. Sidley admits that WesCorp purchased AAA rated private label
2 MBS. Sidley lacks knowledge or information sufficient to form a belief as to the
3 truth of the remaining allegations of Paragraph 114 and on that basis denies those
4 allegations.

5 **The Risks of Option ARM MBS**

6 115. Sidley lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations of Paragraph 115 and on that basis denies those
8 allegations, except to the extent they reference the contents of WesCorp's corporate
9 policies, which speak for themselves. Sidley refers to WesCorp's corporate policies
10 for their contents and denies any characterization inconsistent with their terms.

11 116. Sidley admits that WesCorp purchased Option ARM MBS but denies
12 that they were a new security type. Sidley lacks information or knowledge
13 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
14 116 and on that basis denies those allegations.

15 117. Sidley admits that WesCorp purchased Option ARM MBS with the
16 approval of WesCorp's Board of Directors and ALCO but denies that Option ARM
17 MBS were a new security type. Sidley lacks knowledge or information sufficient to
18 form a belief as to the truth of the allegations of Paragraph 117 and on that basis
19 denies those allegations.

20 118. Sidley admits that, with the approval of WesCorp's Board of
21 Directors and ALCO, WesCorp purchases Option ARM MBS, but denies that
22 Option ARM MBS were a new security type. Sidley lacks knowledge or
23 information sufficient to form a belief as to the truth of the allegations of Paragraph
24 118 and on that basis denies those allegations.

25 119. Sidley denies that Option ARM MBS were a new security type.
26 Sidley lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations of Paragraph 119 and on that basis denies those allegations.

28 120. Sidley lacks information or knowledge sufficient to form a belief as

1 to the truth of the allegations of Paragraph 120 and on that basis denies those
2 allegations.

3 121. Sidley lacks information or knowledge sufficient to form a belief as
4 to the truth of the allegations of Paragraph 121 and on that basis denies those
5 allegations.

6 122. Sidley lacks information or knowledge sufficient to form a belief as
7 to the truth of the allegations of Paragraph 122 and on that basis denies those
8 allegations.

9 123. Sidley lacks knowledge or information sufficient to form a belief as
10 to the truth of the allegations of Paragraph 123 and on that basis denies those
11 allegations.

12 124. Sidley specifically denies any allegation of Paragraph 124 that he
13 was required to propose or adopt concentration limits for Option ARM MBS in
14 WesCorp's portfolio or to recommend concentration limits other than obligor
15 concentration limits. Sidley lacks knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations of Paragraph 124 and on that basis
17 denies those allegations.

18 125. Sidley lacks knowledge or information sufficient to form a belief as
19 to the truth of the allegations of Paragraph 125 and on that basis denies those
20 allegations.

21 126. Sidley lacks information or knowledge sufficient to form a belief as
22 to the truth of the allegations of Paragraph 126 and on that basis denies those
23 allegations.

24 127. Paragraph 127 contains legal conclusions, to which no response is
25 required. To the extent the allegations require a response, they are denied.

26 128. Sidley specifically denies any allegation of Paragraph 128 that he
27 was required to propose or adopt concentration limits for Option ARM MBS in
28 WesCorp's portfolio or to recommend concentration limits other than obligor

1 concentration limits. Sidley admits that WesCorp purchased AAA rated and AAA
2 rated MBS. Sidley lacks knowledge or information sufficient to form a belief as to
3 the truth of the remaining allegations of Paragraph 128 and on that basis denies
4 those allegations.

5 129. Sidley specifically denies any allegation of Paragraph 129 that he
6 was required to propose or adopt concentration limits for Option ARM MBS in
7 WesCorp's portfolio or to recommend concentration limits other than obligor
8 concentration limits. Sidley further denies that WesCorp was unaware of the
9 concentrations of MBS. Sidley lacks information or knowledge sufficient to form a
10 belief as to the truth of the remaining allegations of Paragraph 129 and on that basis
11 denies those allegations.

12 130. Sidley denies that WesCorp was unaware of the concentrations of
13 Option ARM MBS. Sidley lacks information or knowledge sufficient to form a
14 belief as to the truth of the remaining allegations of Paragraph 130 and on that basis
15 denies those allegations.

16 131. Sidley lacks information or knowledge sufficient to form a belief as
17 to the truth of the allegations of Paragraph 131 and on that basis denies those
18 allegations.

19 132. Sidley admits that he was the officer in charge of the Investment
20 Credit Services Department for a period of time and Chief Risk Officer from
21 October 3, 2006 to June 9, 2009. Paragraph 132 contains legal conclusions to
22 which no response is required. To the extent these allegations require a response,
23 Sidley lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations of Paragraph 132, as well as to the truth of the remaining allegations
25 of Paragraph 132, and on that basis denies those allegations.

26 133. Sidley lacks information or knowledge sufficient to form a belief as
27 to the truth of the allegations of Paragraph 133 and on that basis denies those
28 allegations.

The Risks in WesCorp's Portfolio

134. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 134 and on that basis denies those allegations.

135. Sidley admits that the Officer Defendants and the Director Defendants generally attended the ALCO meetings. Sidley further admits that at ALCO meetings, there were often presentations about the economy and WesCorp's investments. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 135 and on that basis denies those allegations.

136. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 136 and on that basis denies those allegations.

137. Sidley admits that the Officer Defendants and the Director Defendants generally attended the ALCO meetings. Sidley further admits that at some ALCO meetings, there were presentations about interest rates and housing markets. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 137 and on that basis denies those allegations.

138. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 138 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's ALCO books, which speak for themselves. Sidley refers to WesCorp's ALCO books for their contents and denies any characterization inconsistent with its terms.

139. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 139 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's ALCO books, which speak for themselves. Sidley refers to WesCorp's ALCO books for

1 their contents and denies any characterization inconsistent with its terms.

2 140. Sidley lacks information or knowledge sufficient to form a belief as
3 to the truth of the allegations of Paragraph 140 and on that basis denies those
4 allegations.

5 141. Sidley lacks knowledge or information sufficient to form a belief as
6 to the truth of the allegations in Paragraph 141 and on that basis denies those
7 allegations, except to the extent they reference the contents of WesCorp's ALCO
8 books, which speak for themselves. Sidley refers to WesCorp's ALCO books for
9 their contents and denies any characterization inconsistent with its terms.

10 142. Sidley lacks knowledge or information sufficient to form a belief as
11 to the truth of the allegations in Paragraph 142 and on that basis denies those
12 allegations, except to the extent they reference the contents of WesCorp's ALCO
13 books, which speak for themselves. Sidley refers to WesCorp's ALCO books for
14 their contents and denies any characterization inconsistent with its terms.

15 143. Sidley lacks information or knowledge sufficient to form a belief as
16 to the truth of the allegations of Paragraph 143 and on that basis denies those
17 allegations.

18 144. Sidley admits that WesCorp continued to purchase AAA rated
19 Option ARM MBS in 2007 and that it stopped purchasing private label MBS
20 sometime in 2007. Sidley lacks information or knowledge sufficient to form a
21 belief as to the truth of the remaining allegations of Paragraph 144 and on that basis
22 denies those allegations.

23 145. Paragraph 145 contains legal conclusions, to which no response is
24 required. To the extent the allegations require a response, they are denied.

25 146. Sidley admits that WesCorp continued to purchase AAA rated
26 Option ARM MBS in 2007 and that it stopped purchasing private label MBS
27 sometime in 2007. Sidley lacks information or knowledge sufficient to form a
28 belief as to the truth of the remaining allegations of Paragraph 146 and on that basis

1 denies those allegations.

2 147. Sidley lacks information or knowledge sufficient to form a belief as
3 to the truth of the allegations of Paragraph 147 and on that basis denies those
4 allegations.

5 **WesCorp's Collapse**

6 148. Sidley lacks information or knowledge sufficient to form a belief as
7 to the truth of the allegations of Paragraph 148 and on that basis denies those
8 allegations.

9 149. Sidley specifically denies any allegation of Paragraph 149 that he
10 was required to propose or adopt concentration limits for Option ARM MBS in
11 WesCorp's portfolio or to recommend concentration limits other than obligor
12 concentration limits. Sidley lacks knowledge or information sufficient to form a
13 belief as to the truth of the remaining allegations of Paragraph 149 and on that basis
14 denies those allegations.

15 150. Sidley lacks information or knowledge sufficient to form a belief as
16 to the truth of the allegations of Paragraph 150 and on that basis denies those
17 allegations.

18 151. Sidley specifically denies any allegation of Paragraph 151 that he
19 was required to propose or adopt concentration limits for Option ARM MBS in
20 WesCorp's portfolio or to recommend concentration limits other than obligor
21 concentration limits. Sidley lacks information or knowledge sufficient to form a
22 belief as to the truth of the remaining allegations of Paragraph 151 and on that basis
23 denies those allegations.

24 152. Sidley lacks information or knowledge sufficient to form a belief as
25 to the truth of the allegations of Paragraph 152 and on that basis denies those
26 allegations.

27 153. Sidley lacks information or knowledge sufficient to form a belief as
28 to the truth of the allegations of Paragraph 153 and on that basis denies those

1 allegations.

2 **The SERP Payments**

3 154. Sidney lacks information or knowledge sufficient to form a belief as
4 to the truth of the allegations of Paragraph 154 and on that basis denies those
5 allegations.

6 155. Sidney lacks information or knowledge sufficient to form a belief as
7 to the truth of the allegations of Paragraph 155 and on that basis denies those
8 allegations.

9 156. Sidney admits, on information and belief, that Siravo became
10 President and CEO of WesCorp. Sidney lacks information or knowledge sufficient
11 to form a belief as to the truth of the remaining allegations of Paragraph 156 and on
12 that basis denies those allegations.

13 157. Sidney lacks information or knowledge sufficient to form a belief as
14 to the truth of the allegations of Paragraph 157 and on that basis denies those
15 allegations.

16 158. Sidney lacks information or knowledge sufficient to form a belief as
17 to the truth of the allegations of Paragraph 158 and on that basis denies those
18 allegations.

19 159. Sidney lacks information or knowledge sufficient to form a belief as
20 to the truth of the allegations of Paragraph 159 and on that basis denies those
21 allegations.

22 160. Sidney lacks information or knowledge sufficient to form a belief as
23 to the truth of the allegations of Paragraph 160 and on that basis denies those
24 allegations.

25 161. Sidney lacks information or knowledge sufficient to form a belief as
26 to the truth of the allegations of Paragraph 161 and on that basis denies those
27 allegations.

28 162. Sidney lacks information or knowledge sufficient to form a belief as

1 to the truth of the allegations of Paragraph 162 and on that basis denies those
2 allegations.

3 163. Sidley lacks information or knowledge sufficient to form a belief as
4 to the truth of the allegations of Paragraph 163 and on that basis denies those
5 allegations.

6 164. Sidley lacks information or knowledge sufficient to form a belief as
7 to the truth of the allegations of Paragraph 164 and on that basis denies those
8 allegations.

9 165. Sidley lacks information or knowledge sufficient to form a belief as
10 to the truth of the allegations of Paragraph 165 and on that basis denies those
11 allegations.

12 166. Sidley lacks information or knowledge sufficient to form a belief as
13 to the truth of the allegations of Paragraph 166 and on that basis denies those
14 allegations.

15 167. Sidley lacks information or knowledge sufficient to form a belief as
16 to the truth of the allegations of Paragraph 167 and on that basis denies those
17 allegations.

18 168. Sidley lacks information or knowledge sufficient to form a belief as
19 to the truth of the allegations of Paragraph 168 and on that basis denies those
20 allegations.

21 169. Sidley lacks information or knowledge sufficient to form a belief as
22 to the truth of the allegations of Paragraph 169 and on that basis denies those
23 allegations.

24 170. Sidley lacks information or knowledge sufficient to form a belief as
25 to the truth of the allegations of Paragraph 170 and on that basis denies those
26 allegations.

27 171. Sidley lacks information or knowledge sufficient to form a belief as
28 to the truth of the allegations of Paragraph 171 and on that basis denies those

1 allegations.

2 172. Sidley lacks information or knowledge sufficient to form a belief as
3 to the truth of the allegations of Paragraph 172 and on that basis denies those
4 allegations.

5 173. Sidley lacks information or knowledge sufficient to form a belief as
6 to the truth of the allegations of Paragraph 173 and on that basis denies those
7 allegations.

8 174. Sidley lacks information or knowledge sufficient to form a belief as
9 to the truth of the allegations of Paragraph 174 and on that basis denies those
10 allegations.

11 175. Sidley lacks information or knowledge sufficient to form a belief as
12 to the truth of the allegations of Paragraph 175 and on that basis denies those
13 allegations.

14 176. Sidley lacks information or knowledge sufficient to form a belief as
15 to the truth of the allegations of Paragraph 176 and on that basis denies those
16 allegations.

17 177. Sidley lacks information or knowledge sufficient to form a belief as
18 to the truth of the allegations of Paragraph 177 and on that basis denies those
19 allegations.

20 178. Sidley lacks information or knowledge sufficient to form a belief as
21 to the truth of the allegations of Paragraph 178 and on that basis denies those
22 allegations.

23 179. Sidley lacks information or knowledge sufficient to form a belief as
24 to the truth of the allegations of Paragraph 179 and on that basis denies those
25 allegations.

26 180. Sidley lacks information or knowledge sufficient to form a belief as
27 to the truth of the allegations of Paragraph 180 and on that basis denies those
28 allegations.

1 190. Paragraph 190 contains legal conclusions, to which no response is
2 required. To the extent the allegations require a response, Sidley lacks information
3 or knowledge sufficient to form a belief as to the truth of the allegations of
4 Paragraph 190 and on that basis denies those allegations.

5 191. Paragraph 191 contains legal conclusions, to which no response is
6 required. To the extent the allegations require a response, Sidley lacks information
7 or knowledge sufficient to form a belief as to the truth of the allegations of
8 Paragraph 191 and on that basis denies those allegations.

9 192. Paragraph 192 contains legal conclusions, to which no response is
10 required. To the extent the allegations require a response, Sidley lacks information
11 or knowledge sufficient to form a belief as to the truth of the allegations of
12 Paragraph 192 and on that basis denies those allegations.

13 193. Paragraph 193 contains legal conclusions, to which no response is
14 required. To the extent the allegations require a response, Sidley lacks information
15 or knowledge sufficient to form a belief as to the truth of the allegations of
16 Paragraph 193 and on that basis denies those allegations.

17 194. Sidley admits that he served as Chief Risk Officer from October 3,
18 2006 through June 9, 2009, and as Vice President for Risk Assessment from June
19 18, 1998 through June 9, 2009. The remaining allegations of Paragraph 194
20 contain legal conclusions, to which no response is required. To the extent the
21 allegations require a response, they are denied.

22 195. Paragraph 195 contains legal conclusions, to which no response is
23 required. To the extent the allegations require a response, they are denied.

24 196. Sidley denies that he breached any duties that he owed to WesCorp.
25 Paragraph 196 contains legal conclusions, to which no response is required. To the
26 extent the remaining allegations require a response, they are denied.

27 197. Sidley lacks information or knowledge sufficient to form a belief as
28 to the truth of the allegations of Paragraph 197 and on that basis denies those

1 allegations.

2 198. Sidley lacks information or knowledge sufficient to form a belief as
3 to the truth of the allegations of Paragraph 198 and on that basis denies those
4 allegations.

5 **SECOND CLAIM FOR RELIEF**

6 **(Breach of Fiduciary Duties – Against Defendants Rhamy, Updike, Dames,**
7 **Osberg, Longson and Harvey)**

8 199. Sidley incorporates by reference his responses to paragraphs 1
9 through 198 as though set forth in full.

10 200. Sidley is not named as a defendant to this Claim and accordingly no
11 response is required. To the extent the allegations require a response, Sidley lacks
12 information or knowledge sufficient to form a belief as to the truth of the
13 allegations, and on that basis denies them.

14 201. Sidley is not named as a defendant to this Claim and accordingly no
15 response is required. To the extent the allegations require a response, Sidley lacks
16 information or knowledge sufficient to form a belief as to the truth of the
17 allegations, and on that basis denies them.

18 202. Sidley is not named as a defendant to this Claim and accordingly no
19 response is required. To the extent the allegations require a response, Sidley lacks
20 information or knowledge sufficient to form a belief as to the truth of the
21 allegations, and on that basis denies them.

22 203. Sidley is not named as a defendant to this Claim and accordingly no
23 response is required. To the extent the allegations require a response, Sidley lacks
24 information or knowledge sufficient to form a belief as to the truth of the
25 allegations, and on that basis denies them.

26 204. Sidley is not named as a defendant to this Claim and accordingly no
27 response is required. To the extent the allegations require a response, Sidley lacks
28 information or knowledge sufficient to form a belief as to the truth of the

1 allegations, and on that basis denies them.

2 205. Sidley is not named as a defendant to this Claim and accordingly no
3 response is required. To the extent the allegations require a response, Sidley lacks
4 information or knowledge sufficient to form a belief as to the truth of the
5 allegations, and on that basis denies them.

6 **THIRD CLAIM FOR RELIEF**

7 **(Breach of Fiduciary Duties – Against Defendants Jordan, Nakamura, Cheney,**
8 **Rhamy, Kramer, Lentz, and Osberg)**

9 206. Sidley incorporates by reference his responses to paragraphs 1
10 through 205 as though set forth in full.

11 207. Sidley is not named as a defendant to this Claim and accordingly no
12 response is required. To the extent the allegations require a response, Sidley lacks
13 information or knowledge sufficient to form a belief as to the truth of the
14 allegations, and on that basis denies them.

15 208. Sidley is not named as a defendant to this Claim and accordingly no
16 response is required. To the extent the allegations require a response, Sidley lacks
17 information or knowledge sufficient to form a belief as to the truth of the
18 allegations, and on that basis denies them.

19 209. Sidley is not named as a defendant to this Claim and accordingly no
20 response is required. To the extent the allegations require a response, Sidley lacks
21 information or knowledge sufficient to form a belief as to the truth of the
22 allegations, and on that basis denies them.

23 210. Sidley is not named as a defendant to this Claim and accordingly no
24 response is required. To the extent the allegations require a response, Sidley lacks
25 information or knowledge sufficient to form a belief as to the truth of the
26 allegations, and on that basis denies them.

27 211. Sidley is not named as a defendant to this Claim and accordingly no
28 response is required. To the extent the allegations require a response, Sidley lacks

1 information or knowledge sufficient to form a belief as to the truth of the
2 allegations, and on that basis denies them.

3 212. Sidley is not named as a defendant to this Claim and accordingly no
4 response is required. To the extent the allegations require a response, Sidley lacks
5 information or knowledge sufficient to form a belief as to the truth of the
6 allegations, and on that basis denies them.

7 **FOURTH CLAIM FOR RELIEF**

8 **(Breach of Fiduciary Duties – Against All Director Defendants)**

9 213. Sidley incorporates by reference his responses to paragraphs 1
10 through 212 as though set forth in full.

11 214. Sidley is not named as a defendant to this Claim and accordingly no
12 response is required. To the extent the allegations require a response, Sidley lacks
13 information or knowledge sufficient to form a belief as to the truth of the
14 allegations, and on that basis denies them.

15 215. Sidley is not named as a defendant to this Claim and accordingly no
16 response is required. To the extent the allegations require a response, Sidley lacks
17 information or knowledge sufficient to form a belief as to the truth of the
18 allegations, and on that basis denies them.

19 216. Sidley is not named as a defendant to this Claim and accordingly no
20 response is required. To the extent the allegations require a response, Sidley lacks
21 information or knowledge sufficient to form a belief as to the truth of the
22 allegations, and on that basis denies them.

23 217. Sidley is not named as a defendant to this Claim and accordingly no
24 response is required. To the extent the allegations require a response, Sidley lacks
25 information or knowledge sufficient to form a belief as to the truth of the
26 allegations, and on that basis denies them.

27 218. Sidley is not named as a defendant to this Claim and accordingly no
28 response is required. To the extent the allegations require a response, Sidley lacks

1 information or knowledge sufficient to form a belief as to the truth of the
2 allegations, and on that basis denies them.

3 219. Sidley is not named as a defendant to this Claim and accordingly no
4 response is required. To the extent the allegations require a response, Sidley lacks
5 information or knowledge sufficient to form a belief as to the truth of the
6 allegations, and on that basis denies them.

7 220. Sidley is not named as a defendant to this Claim and accordingly no
8 response is required. To the extent the allegations require a response, Sidley lacks
9 information or knowledge sufficient to form a belief as to the truth of the
10 allegations, and on that basis denies them.

11 **FIFTH CLAIM FOR RELIEF**

12 **(Breach of Fiduciary Duty – Against Siravo and Swedberg)**

13 221. Sidley incorporates by reference his responses to paragraphs 1
14 through 220 as though set forth in full.

15 222. Sidley is not named as a defendant to this Claim and accordingly no
16 response is required. To the extent the allegations require a response, Sidley lacks
17 information or knowledge sufficient to form a belief as to the truth of the
18 allegations, and on that basis denies them.

19 223. Sidley is not named as a defendant to this Claim and accordingly no
20 response is required. To the extent the allegations require a response, Sidley lacks
21 information or knowledge sufficient to form a belief as to the truth of the
22 allegations, and on that basis denies them.

23 224. Sidley is not named as a defendant to this Claim and accordingly no
24 response is required. To the extent the allegations require a response, Sidley lacks
25 information or knowledge sufficient to form a belief as to the truth of the
26 allegations, and on that basis denies them.

27 225. Sidley is not named as a defendant to this Claim and accordingly no
28 response is required. To the extent the allegations require a response, Sidley lacks

1 information or knowledge sufficient to form a belief as to the truth of the
2 allegations, and on that basis denies them.

3 226. Sidley is not named as a defendant to this Claim and accordingly no
4 response is required. To the extent the allegations require a response, Sidley lacks
5 information or knowledge sufficient to form a belief as to the truth of the
6 allegations, and on that basis denies them.

7 **SIXTH CLAIM FOR RELIEF**

8 **(Fraud – Against Siravo and Swedberg)**

9 227. Sidley incorporates by reference his responses to paragraphs 1
10 through 226 as though set forth in full.

11 228. Sidley is not named as a defendant to this Claim and accordingly no
12 response is required. To the extent the allegations require a response, Sidley lacks
13 information or knowledge sufficient to form a belief as to the truth of the
14 allegations, and on that basis denies them.

15 229. Sidley is not named as a defendant to this Claim and accordingly no
16 response is required. To the extent the allegations require a response, Sidley lacks
17 information or knowledge sufficient to form a belief as to the truth of the
18 allegations, and on that basis denies them.

19 230. Sidley is not named as a defendant to this Claim and accordingly no
20 response is required. To the extent the allegations require a response, Sidley lacks
21 information or knowledge sufficient to form a belief as to the truth of the
22 allegations, and on that basis denies them.

23 231. Sidley is not named as a defendant to this Claim and accordingly no
24 response is required. To the extent the allegations require a response, Sidley lacks
25 information or knowledge sufficient to form a belief as to the truth of the
26 allegations, and on that basis denies them.

27 232. Sidley is not named as a defendant to this Claim and accordingly no
28 response is required. To the extent the allegations require a response, Sidley lacks

1 information or knowledge sufficient to form a belief as to the truth of the
2 allegations, and on that basis denies them.

3 233. Sidley is not named as a defendant to this Claim and accordingly no
4 response is required. To the extent the allegations require a response, Sidley lacks
5 information or knowledge sufficient to form a belief as to the truth of the
6 allegations, and on that basis denies them.

7 234. Sidley is not named as a defendant to this Claim and accordingly no
8 response is required. To the extent the allegations require a response, Sidley lacks
9 information or knowledge sufficient to form a belief as to the truth of the
10 allegations, and on that basis denies them.

11 **SEVENTH CLAIM FOR RELIEF**

12 **(Breach of Fiduciary Duty – Against Siravo)**

13 235. Sidley incorporates by reference his responses to paragraphs 1
14 through 234 as though set forth in full.

15 236. Sidley is not named as a defendant to this Claim and accordingly no
16 response is required. To the extent the allegations require a response, Sidley lacks
17 information or knowledge sufficient to form a belief as to the truth of the
18 allegations, and on that basis denies them.

19 237. Sidley is not named as a defendant to this Claim and accordingly no
20 response is required. To the extent the allegations require a response, Sidley lacks
21 information or knowledge sufficient to form a belief as to the truth of the
22 allegations, and on that basis denies them.

23 238. Sidley is not named as a defendant to this Claim and accordingly no
24 response is required. To the extent the allegations require a response, Sidley lacks
25 information or knowledge sufficient to form a belief as to the truth of the
26 allegations, and on that basis denies them.

27 239. Sidley is not named as a defendant to this Claim and accordingly no
28 response is required. To the extent the allegations require a response, Sidley lacks

1 information or knowledge sufficient to form a belief as to the truth of the
2 allegations, and on that basis denies them.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(Unjust Enrichment – Against Lane)**

5 240. Sidley incorporates by reference his responses to paragraphs 1
6 through 239 as though set forth in full.

7 241. Sidley is not named as a defendant to this Claim and accordingly no
8 response is required. To the extent the allegations require a response, Sidley lacks
9 information or knowledge sufficient to form a belief as to the truth of the
10 allegations, and on that basis denies them.

11 242. Sidley is not named as a defendant to this Claim and accordingly no
12 response is required. To the extent the allegations require a response, Sidley lacks
13 information or knowledge sufficient to form a belief as to the truth of the
14 allegations, and on that basis denies them.

15 243. Sidley is not named as a defendant to this Claim and accordingly no
16 response is required. To the extent the allegations require a response, Sidley lacks
17 information or knowledge sufficient to form a belief as to the truth of the
18 allegations, and on that basis denies them.

19 244. Sidley is not named as a defendant to this Claim and accordingly no
20 response is required. To the extent the allegations require a response, Sidley lacks
21 information or knowledge sufficient to form a belief as to the truth of the
22 allegations, and on that basis denies them.

23 245. Other than as expressly and specifically admitted above in the
24 response to Paragraphs 1-244, Sidley denies every allegation of the Second
25 Amended Complaint.

26 **AFFIRMATIVE DEFENSES**

27 As and for his defenses, Sidley alleges as follows and reserves the right to
28 assert additional defenses in the event that discovery indicates they would be

1 appropriate.

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Consent, Approval, Acquiescence, Participation, Ratification)**

4 246. The Second Amended Complaint, and each cause of action alleged
5 therein against Sidley, is barred, in whole or in part, by prior consent, approval,
6 acquiescence, participation and/or ratification as to any activity that NCUA
7 challenges as improper. In addition, the claims against Sidley are barred because
8 the acts stated were ratified or approved by other state and federal agencies or
9 entities.

10 247. Both WesCorp (by and through its Board of Directors (the "Board"),
11 individual directors, executive officers, and Executive Committee and/or the Asset
12 Liability Committee (the "ALCO") and NCUA's Office of Corporate Credit
13 Unions ("OCCU") provided supervision and oversight of WesCorp, including its
14 investment strategies and risk assessment. WesCorp and the Board's supervision
15 was effected, among other things, by implementing policies to direct WesCorp's
16 activities and its investments, by receiving and reviewing reports on WesCorp's
17 activities, by reviewing and approving actions and decisions of WesCorp officers
18 and employees, by limiting the role and authority of certain officers and employees
19 such as Sidley, and by directing WesCorp's officers to follow the directions of the
20 NCUA and its on-site examiner. Without limiting the foregoing, both the NCUA
21 and WesCorp specifically directed that Sidley have no involvement in WesCorp's
22 choice of securities to purchase or the implementation of such decisions. On
23 information and belief, the Board adopted certain policies that addressed
24 WesCorp's investment strategies, risk assessment efforts, purchases of MBS,
25 amendments, the review and approval of concentration limits and risk assessment
26 efforts, approval and authorization of investments in MBS, and approvals of
27 specific purchases of MBS. To the extent such policies were applicable to his
28 scope of duties, Sidley complied with such policies and directives. Moreover, on

1 information and belief, the Board directed its officers to follow the guidance and
2 direction of NCUA in all respects, which direction Sidley followed to the extent
3 applicable to his scope of duties.

4 248. NCUA's supervision was done, among other ways, through an on-
5 site examiner who was physically located at WesCorp's facilities on a full-time
6 basis, examining WesCorp's activities. The OCCU examiner's efforts resulted in
7 yearly examination reports, analyzing and assessing WesCorp's operations,
8 including but not limited to its investment strategies and risk assessment. In
9 addition, the NCUA's Office of Capital Markets ("OCM") provided assistance to
10 NCUA's OCCU examiner by, among other things, helping to evaluate WesCorp's
11 investments and related asset and liability issues.

12 249. As a result of these constant oversight and examination efforts,
13 NCUA and the Board were, upon information and belief, at all times aware of
14 WesCorp's monitoring and risk-protection efforts and, upon further information
15 and belief, consistently approved of them. WesCorp's efforts which NCUA and the
16 Board, upon information and belief, knew of and approved of included, among
17 other things: (i) limiting investments to primarily high grade securities with AA and
18 AAA ratings; (ii) conducting thorough credit reviews of proposed security
19 purchases based upon available information prior to purchasing; (iii) conducting
20 credit reviews on new types of securities not previously purchased by WesCorp;
21 (iv) conducting annual credit reviews on existing securities; (v) preparing monthly
22 watch lists for, and keeping appropriate oversight of, securities that were not
23 performing well; (vi) creating concentration limits as to individual issues; (vii)
24 creating concentration limits as to different security types according to criteria set
25 by the Board and by NCUA; and (viii) publishing monthly reports on credit status
26 and providing the WesCorp Board with substantial information regarding
27 concentration limits and credit enhancement levels on WesCorp's security
28 portfolios.

1 250. Both WesCorp and NCUA were, upon information and belief, also
2 aware of the fact that Option ARM MBSs were not a “new” security type that
3 WesCorp began investing in at any time alleged in the Second Amended
4 Complaint. NCUA regulations and WesCorp policies refer to “new” security types
5 as those securities which have different collateral than other securities. As NCUA
6 and the Board knew at all relevant times, WesCorp had a long history of purchasing
7 securities with the same type of collateral – mortgages – as Option ARM MBSs.
8 Upon information and belief, both the Board and NCUA and its OCCU examiners
9 ratified WesCorp’s investment in Option ARM MBSs and never suggested that
10 Option ARM MBSs were a “new” security type which WesCorp should review as
11 such.

12 251. NCUA, though its OCCU examiners, the OCCU examination reports
13 and other efforts and statements, as well as the Board, consistently approved of
14 WesCorp’s investment strategies and investment concentrations, including
15 WesCorp’s investments in Option ARM MBSs.

16 252. Prior to its involvement in this lawsuit, neither the Board nor NCUA
17 ever made any claims that WesCorp’s investment strategies violated NCUA
18 regulations or WesCorp policies. Similarly, the OCCU examination reports never
19 made such suggestions, and on information and belief the Board never adopted or
20 even proposed any policies to that effect.

21 253. Rather, both the Board and NCUA at all times, upon information and
22 belief, approved of WesCorp’s investment strategies, policies and procedures based
23 upon full knowledge of all relevant facts.

24 254. The Board and NCUA also, upon information and belief, approved of
25 WesCorp’s risk assessment efforts. In those instances, to the extent there were any,
26 where NCUA, through the OCCU examination reports, raised any concerns
27 regarding WesCorp’s risk assessment efforts, WesCorp promptly addressed those
28 concerns and NCUA subsequently, in later OCCU examination reports and/or

1 through other statements or actions, approved of WesCorp's efforts. For its part,
2 the Board reviewed and approved the risk assessment efforts undertaken by Sidley,
3 and in all other respects directed Sidley to follow the direction of NCUA.

4 255. WesCorp in fact, upon information and belief, promptly addressed
5 any concerns raised by NCUA in an OCCU examination report and, upon
6 information and belief, obtained subsequent approval from NCUA of those efforts.

7 256. In at least 2006 and 2007, after the investments at issue in NCUA's
8 Second Amended Complaint were made, NCUA continued to approve of
9 WesCorp's management, risk assessment and ability to operate within regulatory
10 limits, as did the Board.

11 257. Further, Sidley is informed and believes that NCUA granted
12 WesCorp the highest level of expanded investment authority given to any corporate
13 credit union, including but not limited to the authority to invest in securities rated as
14 low as BBB, although WesCorp never invested, upon information and belief, in
15 securities rated lower than AA. For their part, WesCorp and the Board acted to
16 assert such expanded investment authority on their own judgment and discretion,
17 never sought Sidley's input into such decisions, and indeed directed that he remain
18 independent of and uninvolved in such decisions.

19 258. In light of the foregoing, the Second Amended Complaint, and each
20 cause of action alleged therein against Sidley, is barred, in whole or in part, because
21 the parties with actual responsibility and authority knowingly ratified and approved
22 of the policies, strategies and actions which are now complained of in the Second
23 Amended Complaint, and further directed that Sidley not assume responsibility for
24 the matters complained of in the Second Amended Complaint.

25 **SECOND AFFIRMATIVE DEFENSE**

26 **(Business Judgment Rule)**

27 259. Sidley incorporates by reference and realleges each and every
28 allegation contained in paragraphs 246-258 as though fully set forth herein.

1 260. The Second Amended Complaint, and each cause of action alleged
2 therein against Sidley, is barred by the business judgment rule in that every act or
3 omission challenged by NCUA was made after reasonable investigation and in
4 good faith based upon reasonable grounds to believe that such acts or omissions
5 were reasonable and prudent under the circumstances.

6 **THIRD AFFIRMATIVE DEFENSE**

7 **(Loyalty, Prudent Person, Candor, Good Faith)**

8 261. Sidley incorporates by reference and realleges each and every
9 allegation contained in paragraphs 246-258 as though fully set forth herein.

10 262. The Second Amended Complaint, and each cause of action alleged
11 therein against Sidley, is barred, in whole or in part, because at all times Sidley
12 acted prudently, honestly, in good faith, with full candor, and in the best interest of
13 WesCorp.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 **(Set Off)**

16 263. Sidley incorporates by reference and realleges each and every
17 allegation contained in paragraphs 246-258 as though fully set forth herein.

18 264. The Second Amended Complaint, and each cause of action alleged
19 therein against Sidley, is subject to Sidley's right of set off with respect to monies
20 owed to him by WesCorp.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Due Diligence and Reasonable Investigation)**

23 265. Sidley incorporates by reference and realleges each and every
24 allegation contained in paragraphs 246-258 as though fully set forth herein.

25 266. The Second Amended Complaint, and each cause of action alleged
26 therein against Sidley, is barred, in whole or in part, because each and every act and
27 omission by Sidley was made after reasonable investigation, and Sidley had
28 reasonable grounds to believe, and did believe, that such acts or omissions were

1 prudent given the circumstances.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 **(Reliance on Professionals and Others)**

4 267. Sidney incorporates by reference and realleges each and every
5 allegation contained in paragraphs 246-258 as though fully set forth herein.

6 268. The Second Amended Complaint, and each cause of action alleged
7 therein against Sidney, is barred, in whole or in part, because every act or omission
8 by Sidney alleged in the Second Amended Complaint, if it occurred at all, was made
9 or occurred in reasonable good faith reliance on the statements and representations
10 of professionals and others upon which Sidney was entitled to rely, including but
11 not limited to the Board, individual directors, the ALCO, WesCorp's professionals
12 as well as its inside and outside auditors, NCUA personnel and examiners, ratings
13 agencies, underwriters, brokers, issuers, investment bankers, financial advisors,
14 and/or legal counsel.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Conduct of Others)**

17 269. Sidney incorporates by reference and realleges each and every
18 allegation contained in paragraphs 246-258 as though fully set forth herein.

19 270. The Second Amended Complaint, and each cause of action alleged
20 therein against Sidney, is barred, in whole or in part, to the extent NCUA purports to
21 hold Sidney responsible for alleged breaches of fiduciary duties, negligence, or
22 conduct engaged in, by third-parties or other defendants, including but not limited
23 to rating agencies, lenders and issuers.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Apportionment)**

26 271. Sidney incorporates by reference and realleges each and every
27 allegation contained in paragraphs 246-258 as though fully set forth herein.

28 272. Without admitting that NCUA suffered damages in any amount, or

1 that Sidney or any defendant is or should be liable for any such damages, Sidney
2 asserts that his liability and the liability of any other responsible persons, named or
3 unnamed, should be apportioned according to their relative degrees of fault, and
4 any alleged liability of Sidney should be reduced accordingly.

5 **NINTH AFFIRMATIVE DEFENSE**

6 **(Intervening or Superseding Cause)**

7 273. Sidney incorporates by reference and realleges each and every
8 allegation contained in paragraphs 246-258 as though fully set forth herein.

9 274. The Second Amended Complaint, and each cause of action alleged
10 therein against Sidney, is barred, in whole or in part, because NCUA's alleged
11 damages, if any, were the result of one or more intervening or superseding causes
12 or caused by the acts and/or failures to act of persons and/or entities other than
13 Sidney, and were not the result of any act or omission on the part of Sidney.

14 **TENTH AFFIRMATIVE DEFENSE**

15 **(Macroeconomic Factors)**

16 275. Sidney incorporates by reference and realleges each and every
17 allegation contained in paragraphs 246-258 as though fully set forth herein.

18 276. The Second Amended Complaint, and each cause of action alleged
19 therein against Sidney, is barred, in whole or in part, because NCUA's injuries or
20 damages, to the extent they exist, were caused by supervening events unconnected
21 to Sidney, including macroeconomic and mortgage industry events that constrained
22 WesCorp's access to the credit and capital markets and affected its liquidity.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 **(Estoppel)**

25 277. Sidney incorporates by reference and realleges each and every
26 allegation contained in paragraphs 246-258 as though fully set forth herein.

27 278. The Second Amended Complaint, and each cause of action alleged
28 therein against Sidney, is barred, in whole or in part, by the doctrine of estoppel

1 because WesCorp complied with the NCUA's regulations and directives
2 and/because WesCorp's investments were reviewed and approved by the NCUA
3 and its examiners and therefore, by its words, actions and failures to act, NCUA is
4 equitably estopped from asserting each of the purported causes of action alleged in
5 the Complaint and/or from obtaining any of the relief sought thereby.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 279. Sidley incorporates by reference and realleges each and every
9 allegation contained in paragraphs 246-258 as though fully set forth herein.

10 280. The Second Amended Complaint, and each cause of action alleged
11 therein against Sidley, is barred, in whole or in part, because of the applicable
12 statute(s) of limitations and/or period(s) of repose.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 **(No Entitlement to Compensatory Damages)**

15 281. Sidley incorporates by reference and realleges each and every
16 allegation contained in paragraphs 246-258 as though fully set forth herein.

17 282. NCUA is not entitled to recover the compensatory damages
18 requested in the Second Amended Complaint.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 **(No Entitlement to Exemplary or Punitive Damages)**

21 283. Sidley incorporates by reference and realleges each and every
22 allegation contained in paragraphs 246-258 as though fully set forth herein.

23 284. NCUA is precluded from recovering exemplary or punitive damages,
24 either in whole or in part, from Sidley under the applicable provisions of the law,
25 including, without limitation, California Civil Code section 3294, the United States
26 Constitution and/or the California Constitution.

27 //

28 //

FIFTEENTH AFFIRMATIVE DEFENSE

(No Entitlement to Costs of Litigation)

285. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

286. NCUA is not entitled to recover its costs and expenses incurred in this action, including, without limitation, attorneys' fees, from Sidley.

COUNTERCLAIMS

For counterclaims, Sidley alleges as follows:

Jurisdiction

287. The Court has supplemental jurisdiction over these counterclaims under 28 U.S.C. § 1367(a), because these counterclaims and the purported claims alleged by NCUA all form part of the same case or controversy concerning the parties' rights and responsibilities related to Defendants' service as officers of WesCorp.

Parties

288. Counterclaimant Sidley served as Vice President for Risk Assessment for WesCorp from on or about June 18, 1998, and as Chief Risk Officer in charge of investment credit services for WesCorp from in or about 2007. On or about June 9, 2009, Sidley ceased serving as both Vice President for Risk Assessment and as Chief Risk Officer and began serving as Vice President of Strategic Projects, a role he held until he retired from WesCorp on April 2, 2010. Sidley reported to WesCorp's Supervisory Committee, which was akin to a corporate audit committee. Sidley reported to the Supervisory Committee to maintain his independence because his role at WesCorp was not non-managerial, and his department was tasked with risk assessment, not risk management.

289. Counter-defendant National Credit Union Administration Board as Liquidator of Western Corporate Federal Credit Union ("NCUA") is the liquidating agent of WesCorp. As such, on information and belief, NCUA stands in the shoes

1 of WesCorp.

2 **Factual Allegations**

3 **Policy 21**

4 290. WesCorp's Board of Directors adopted a resolution regarding
5 indemnification and insurance, codified in WesCorp's book of policies as "Policy
6 21."

7 291. WesCorp agreed in Policy 21 to indemnify WesCorp's current and
8 former "officials" and "employees," including directors and officers, "to the
9 maximum extent permitted by either" California law or the Model Business
10 Corporation Act ("MBCA"). This agreement included indemnity "for any liability
11 asserted against [the current and former officials and employees] in connection with
12 judicial or administrative proceedings, formal or informal, to which they are or may
13 become parties by reason of the performance of their official duties."

14 292. WesCorp also agreed in Policy 21 that this promise to indemnify
15 "shall" include the costs and attorneys' fees incurred to secure indemnity, whether
16 or not litigation is commenced.

17 293. WesCorp also agreed in Policy 21 to purchase and maintain
18 insurance on behalf of current and former directors and officers "against any
19 liability asserted against them and expenses reasonably incurred by them in their
20 official capacities and arising out of the performance of their official duties to the
21 extent such insurance is permitted by the applicable state law or the Model Business
22 Corporation Act."

23 **The CUMIS Policy**

24 294. WesCorp purchased an insurance policy from CUMIS Insurance
25 Society, Inc. ("CUMIS"), Special Insurance Package No. 065468-22 (the "CUMIS
26 Policy"), effective January 1, 2009.

27 295. On or about November 30, 2009, Jeb Burbott, counsel for WesCorp,
28 and John Cannerday, NCUA counsel, sent a letter to CUMIS tendering the defense

1 of this suit under the CUMIS Policy as to Sidley and several other WesCorp
2 employees then-named as defendants in this action.

3 296. On December 28, 2009, CUMIS sent a letter to Mr. Burbott and Mr.
4 Cannerday denying that CUMIS has a “duty to defend” under the CUMIS Policy
5 and denying coverage for losses.

6 297. CUMIS agreed that the allegations of the complaint – breach of
7 duties in the discharge of Counterclaimants’ duties as directors and employees of
8 WesCorp – were the type of “claims” for “losses” related to a “wrongful act” that
9 are covered by the terms of the Policy.

10 298. However, CUMIS claimed that it does not have a “duty to defend”
11 under the CUMIS Policy, which states that “CUMIS has no duty to defend . . . or to
12 pay any ‘defense costs’ prior to the final adjudication or disposition of any ‘claim’ .
13 . . .”

14 299. CUMIS also refused to cover any losses suffered by Sidley under the
15 investment exclusion of the CUMIS Policy. The CUMIS Policy provides that
16 “CUMIS will not be liable to make any payment for ‘loss’ in connection with or
17 arising out of any ‘claim’ Based upon or resulting directly or indirectly from
18 investments . . . [or] investment or trading losses” Because the claims in this
19 suit arise out of alleged investment losses related to the purchase of mortgage back
20 securities, CUMIS invoked the exclusion to deny coverage for defense costs and
21 losses that may arise out of the litigation.

22 300. The CUMIS Policy has only one limited exception to the investment
23 exclusion. The CUMIS Policy contains a provision requiring payment of defense
24 costs for investment-related claims up to an aggregate amount of \$100,000 for all
25 insureds, subject to a \$500,000 deductible. CUMIS accordingly agreed to provide
26 coverage for Sidley’s defense costs between \$500,000 and \$600,000 incurred in this
27 suit.

28 301. NCUA, after putting WesCorp into conservatorship, compounded the

1 damage to Sidley by canceling the CUMIS Policy, by refusing to obtain
2 replacement insurance coverage and by refusing CUMIS' offer of supplemental
3 insurance with fewer coverage exclusions than the CUMIS Policy.

4 302. If WesCorp had complied with its obligations in Policy 21 and
5 obtained adequate insurance coverage, Sidley would have been covered for all of
6 the costs and claims related to this litigation.

7 303. If NCUA had not done the things alleged above, Sidley would have
8 been covered for all (or at least part) of his defense costs and the claims against him
9 in this litigation..

10 304. Sidley has performed all of his obligations under Policy 21 except to
11 the extent that his performance has been excused by the actions of WesCorp and/or
12 NCUA.

13 305. Sidley has incurred damages for his unreimbursed defense costs
14 incurred to date, which exceed \$60,000 through September 2011. Sidley will
15 continue to incur damages in this litigation in an amount to be determined by
16 dispositive motions or at trial as a result of WesCorp's failure to obtain insurance as
17 required by Policy 21.

18 **NCUA's Denial of Advancement of Defense Costs**

19 306. All of the claims asserted by the NCUA against Sidley in this
20 litigation arise out of his performance of official duties as an officer and employee
21 of WesCorp.

22 307. Sidley has incurred, and continues to incur, attorneys' fees and costs
23 in connection with his defense against the claims asserted by the NCUA as
24 Liquidating Agent for WesCorp in this litigation.

25 308. In or about December 2009, Sidley's counsel sent a letter to the
26 NCUA requesting that the NCUA as conservator of WesCorp indemnify and
27 advance the defense costs of Sidley and several other WesCorp officers and
28 employees also being represented by Sidley's counsel (those other officers and

1 employees are no longer parties to this action) pursuant to Policy 21.

2 309. On January 5, 2010, NCUA's counsel sent a letter stating that
3 NCUA, at that time acting as conservator for WesCorp, "does not believe that it has
4 any obligation to advance defense costs or to agree to indemnify the Employees at
5 this time for the claims made in the Action." NCUA's counsel went on to state:
6 "However, the Conservator [NCUA], in its discretion agrees to advance reasonable
7 defense costs on behalf of the Employees [including Sidley] for the present time."
8 NCUA's counsel further stated: "In the event the Conservator determines that it
9 will proceed against some or all of the Employees in the Action, advancement of
10 defense costs will be reconsidered and will likely cease at that time" and that
11 "[w]hether the conservator provides indemnification will be determined once the
12 matter is resolved." On October 28, 2010, following NCUA's filing of an Amended
13 Complaint in this action, NCUA's counsel sent a letter to Sidley's counsel. Citing
14 its earlier letter, NCUA's counsel stated that the "NCUA Board as Liquidating
15 Agent for WesCorp has not assumed any obligations of WesCorp relating to the
16 indemnification of its former employees and will not advance any defense costs
17 incurred by Mr. Sidley."

18 310. NCUA, after putting WesCorp into conservatorship, compounded the
19 damage to Sidley by canceling the CUMIS Policy, by refusing to obtain
20 replacement insurance coverage and by refusing CUMIS' offer of supplemental
21 insurance with fewer coverage exclusions than the CUMIS Policy.

22 311. If WesCorp had complied with its obligations in Policy 21 and
23 obtained adequate insurance coverage, Sidley would have been covered for all of
24 the costs and claims related to this litigation.

25 312. If NCUA had not done the things alleged above, Sidley would have
26 been covered for all (or at least part) of his defense costs and the claims against him
27 in this litigation..

28 313. Sidley has performed all of his obligations under Policy 21 except to

1 the extent that his performance has been excused by the actions of WesCorp and/or
2 the NCUA.

3 314. Sidley has incurred damages for his unreimbursed defense costs
4 incurred to date, which exceed \$60,000 through September 2011.

5 315. Sidley will continue to incur damages in this litigation in an amount
6 to be determined by dispositive motions or at trial, as a result of WesCorp's failure
7 to obtain insurance as required by Policy 21.

8 **FIRST COUNTERCLAIM: INDEMNIFICATION UNDER POLICY 21**

9 316. Sidley incorporates by reference and realleges each and every
10 allegation contained in paragraphs 287-320 as though fully set forth herein.

11 317. WesCorp agreed in Policy 21 to indemnify Sidley "to the maximum
12 extent permitted by either" California law *or* the MBCA.

13 318. Sidley demands indemnity under Policy 21 to the fullest extent
14 permissible under either California law or the MBCA and/or defense costs to the
15 fullest extent permissible under either California law or the MBCA.

16 319. Sidley also demands recovery of costs and attorneys fees incurred to
17 secure the indemnity provided for in Policy 21.

18 320. If NCUA refuses to indemnify Sidley pursuant to Policy 21, Sidley
19 will suffer damages in an amount to be determined.

20 **SECOND COUNTERCLAIM: INDEMNIFICATION UNDER CALIFORNIA**

21 **LABOR CODE § 2802**

22 321. Sidley incorporates by reference and realleges each and every
23 allegation contained in paragraphs 287-320 as though fully set forth herein.

24 322. At all relevant times, Sidley was an employee of Wescorp.

25 323. Section 2802 of the California Labor Code provies that an employer
26 "shall indemnify his or her employee for all necessary expenditures or losses
27 incurred by the employee in direct consequence of the discharge of his or her
28 duties."

1 324. NCUA as liquidator of WesCorp is therefore obliged to indemnify
2 and reimburse Sidley for his defense costs as incurred in this litigation under the
3 California Labor Code § 2802.

4 325. Sidley has incurred and paid attorneys' fees and costs in defense of
5 the claims asserted by the NCUA as liquidated of WesCorp in this litigation.

6 326. Since on or about October 28, 2010, the NCUA has failed to
7 reimburse Sidley for the attorneys' fees and costs he has incurred and paid to date.

8 327. Sidley has incurred, and will continue to incur, damages as a result of
9 the NCUA's failure to reimburse him for his attorneys' fees and costs.

10 **THIRD COUNTERCLAIM: DECLARATORY RELIEF**

11 328. Sidley incorporates by reference and realleges each and every
12 allegation contained in paragraphs 287-320 as though fully set forth herein.

13 329. The NCUA is obligated to advance Sidley his attorneys' fees and
14 costs incurred in his defense of this litigation under, at least, Policy 21, the MBCA
15 and California Labor Code 2802. However, the NCUA has refused to advance
16 Sidley his attorneys' fees and costs incurred in defense of this litigation and, as
17 such, a

18 330. Further, WesCorp promised in Policy 21 to "purchase and maintain"
19 insurance "against any liability asserted against" Sidley.

20 331. The Policy that WesCorp purchased was inadequate to fulfill this
21 promise. As directors and officers of WesCorp, Sidley's primary responsibilities
22 included advising the directors regarding investment-related. Loss related to
23 investments was a likely source of liability for Sidley.

24 332. Despite the risk of claims related to investment losses, WesCorp
25 purchased the CUMIS Policy knowing that it contained an exclusion for claims
26 related to investment losses and only covered investment related claims defense
27 costs between \$500,000 and \$600,000.

28 333. Because the CUMIS Policy does not cover Sidley for "any liability"

1 related to an investment claim, WesCorp breached the promise to provide insurance
2 coverage for Sidley in Policy 21.

3 334. Because CUMIS invoked the investment exclusion to deny most
4 coverage to Sidley, but for WesCorp's failure to comply with its obligations and
5 obtain adequate insurance coverage, Sidley would have been covered for all of the
6 costs and claims related to this litigation.

7 335. An actual existing and bona fide controversy exists between the
8 parties as to to NCUA's liability for advancement and indemnification of Sidley's
9 attorneys' fees and costs incurred in his defense of this litigation.

10 336. Policy 21 promises to maintain insurance coverage for "any liability"
11 asserted against Sidley, yet the CUMIS Policy does not cover the current action.

12 337. Further, NCUA has declined to pay for, advance or indemnify
13 Sidley's defense costs.

14 338. The rights of the parties under Policy 21, the MBCA and California
15 Labor Code § 2802 can be determined only by declaratory relief.

16 **PRAYER**

17 WHEREFORE, Sidley prays for judgment against plaintiffs as
18 follows:

19 1. That plaintiff takes nothing by the Complaint and that the Complaint
20 be dismissed with prejudice.

21 2. That judgment be entered in favor of Sidley and against plaintiff.

22 3. That Sidley be awarded damages on its counterclaims, in amounts to
23 be determined at trial.

24 4. That the Court adjudge and declare that NCUA is obligated to pay to
25 the fullest extent any liability incurred by Sidley because of the inadequate
26 insurance policy purchased by WesCorp in breach of its promise to purchase and
27 maintain insurance under Policy 21.

28 6. That Sidley be awarded his costs and reasonable attorneys' fees.

1 7. That Sidley be granted such other and further relief as the Court may
2 deem just and proper.

3
4 DATED: October 31, 2011

Kent B. Goss
Seth E. Freilich
ORRICK, HERRINGTON & SUTCLIFFE LLP

5
6
7 By: 

8 SETH E. FREILICH
9 Attorneys For Defendant
10 TIMOTHY T. SIDLEY
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DEMAND FOR JURY TRIAL

Defendant and Counterclaimant Timothy T. Sidley hereby demands a trial by jury for all claims and issues so triable in this action.

DATED: October 31, 2011

Kent B. Goss
Seth E. Freilich
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 

SETH E. FREILICH

Attorneys For Defendant
TIMOTHY T. SIDLEY

PROOF OF SERVICE

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 777 South Figueroa Street, Suite 3200, Los Angeles, California 90017. October 31, 2011, I served the following document(s):

DEFENDANT TIMOTHY T. SIDLEY'S SECOND AMENDED ANSWER
(TO SECOND AMENDED COMPLAINT) AND AMENDED
COUNTERCLAIMS – DEMAND FOR JURY TRIAL

On the interested parties by

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ By depositing a true and correct copy of the document(s) listed above with Fed Ex in Los Angeles, California, enclosed in a sealed envelope.
- ☐ (by Electronic Mail), I caused such documents to be transmitted by electronic mail to the offices of the addressee.

SEE ATTACHED SERVICE LIST

I am employed in the county from which the mailing occurred. On the date indicated above, I placed the sealed envelope(s) for collection and mailing at this firm's office business address indicated above. I am readily familiar with this firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the firm's correspondence would be deposited with the United States Postal Service on this same date with postage thereon fully prepaid in the ordinary course of business.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 31, 2011 at Los Angeles, California.



Norma Sweeney

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